

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANDREW FITCH, RICHARD
D’ALESSANDRO, and MICHELLE
HUTCHISON, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

GIANT EAGLE, INC. d/b/a GETGO CAFÉ
+ MARKET,

Defendant.

Civil Action No. 2:18-cv-01534-DSC-CRE

**THIS MOTION RELATES TO THE
FITCH ACTION**

JORDAN JONES, ROBERT LEMUS and
JASON REED, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

GIANT EAGLE, INC.

Defendant.

**PLAINTIFFS’ MOTION FOR RELIEF PURSUANT TO FED. R. CIV. P 56(d)
REGARDING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56(d), Defendants’ Motion for Summary Judgment (ECF No. 134) (“Defendant’s Motion”) should be denied, or in the alternative, deferred to allow Plaintiffs sufficient time to conduct the discovery necessary to respond. Though this action has been pending for almost two years, much of the litigation has been focused on Defendant’s multiple motions to stay, transfer, and dismiss this and the related *Jones* action. Recognizing the delays associated with Defendant’s motions, the Court granted Defendant’s request to take informal discovery for

mediation purposes. The discovery consisted almost entirely of the depositions of the named and Opt-In Plaintiffs. The parties have not exchanged initial disclosures or written discovery, and no case management order regarding discovery has been entered by the Court. Plaintiffs have conducted even more limited discovery and will take no substantive merits discovery until after the Court has ruled on Plaintiffs' motion for conditional certification and court-authorized notice (if granted). The record is scant and the Court is not objectively in a position to properly weigh the merits of Plaintiffs' claims or Defendants' defenses including, as it has now been asked to do, the propriety of Defendant's exemption defense. Plaintiffs will be significantly and unfairly prejudiced if they are not permitted the discovery they need to respond to Defendant's Motion.

Accordingly, Plaintiffs cannot on the current record "present facts essential to justify its opposition." Fed. R. Civ. P. 56(d). The Court should deny Defendant's Motion or, in the alternative, defer consideration to allow Plaintiffs sufficient time to conduct the discovery necessary to respond. A proposed Order is attached for the Court's consideration.

Dated: February 14, 2020
Philadelphia, PA

Respectfully submitted,

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*Attorneys for Plaintiffs and the Putative Collectives
and Classes*

CERTIFICATE OF SERVICE

I certify that, on February 14, 2020, I caused a copy of this document to be served on all counsel of record via the Court's CM/ECF system.

s/ Jason Conway
Jason Conway